

REMARKS

Claims 1-29 are pending. Claims 1, 3-7, 10, 12, 16, 18, and 20-22 are amended to more particularly point out the distinctions of the present claims from the cited references. Claims 2, 8-9, 11, 14-15, 17, 23-29 are canceled. Applicant submits the claims are in condition for allowance and respectfully request an Advisory Action.

35 U.S.C. § 112 Rejection

Claims 3, 12, and 18 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claims to obviate this rejection. Accordingly, Applicant respectfully requests withdrawal of this rejection.

35 U.S.C. § 103 Rejection

Claims 1-2, 4-11, 13-17, 19-23, 25-27 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Akiyama et al. (U.S. Patent No. 6,430,594), in view of Burns (U.S. Patent No. 6,098,090), and further in view of Fletcher et al. (U.S. Patent No. 5,012,409). Applicant respectfully traverses this rejection.

Governing Criteria

For rejections under 35 U.S.C. Section 103, the establishment of a *prima facie* case of obviousness requires that all the claim limitations must be taught or suggested by the prior art. MPEP § 2143.03. The establishment of a *prima facie* case of obviousness requires that the claimed combination cannot change the principle of operation of the primary reference or render the reference inoperable for its intended purpose. MPEP § 2143.03.

The Supreme Court set the standard for evaluating obviousness in its recent decision (*KSR International Co. v. Teleflex Inc. et al.* (550 U.S. 127 S. Ct. 1727 (2007)) to be “expansive and flexible” and “functional.” However, the standard is not controlling, rather, the various noted factors only “can” or “might” be indicative of obviousness based on the facts. The Supreme Court in KSR enunciated the following principles:

“[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable

variation, Section 103 likely bars it patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill....[A] court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

Simply using the benefit of hindsight in combining references is improper. *In re Lee*, 277 F.3d 1338, 1342-45 (Fed. Cir. 2002); *In re Deminski*, 796 F.2d 436, 442 (Fed. Cir. 1986)). The Supreme Court while recognizing the need “to guard against slipping into the use of hindsight,” acknowledged the following principles:

[r]ejection on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

[I]t can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.

One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent’s claims.

Rather, obviousness is to be determined from the vantage point of a hypothetical person having ordinary skill in the art to which the patent pertains. See 35 U.S.C. § 103(a). The legal construct also presumes that all prior art references in the field of the invention are available to this hypothetical skilled artisan. *In re Carlson*, 983 F.2d 1032, 1038, 25 USPQ 2d 1207, 1211 (Fed. Cir. 1993). The Supreme Court in *KSR* stated that:

a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was independently, known in the prior art.

An examiner may often find every element of a claimed invention in the prior art. “Virtually all [inventions] are combinations of old elements.” *Environmental Designs, Ltd. V. Union Oil Co.*, 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed.Cir. 1983), cert. denied, 464 U.S. 1043 (1984); see also *Richel, Inc. v. Sunspool Corp.*, 714 F.2d 1573, 1579-80, 219 USPQ 8, 12 (Fed.Cir. 1983). If identification of each claimed element in the prior art were sufficient to

negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be “an illogical and inappropriate process by which to determine patentability.” *Sensonics, Inc. v. Aerisonic Corp.*, 81 F.3d 1566, 1570, 38 U.S.P.Q.2d 1551, 1554 (Fed.Cir.1996). In other words, the examiner must show reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.

Discussion

Akiyama does not teach or suggest the present claims. Akiyama is directed towards grouping tasks for programs into task blocks to reduce the frequency of task switch section controlled by the operating system. See e.g., col. 7, lines 4-10. Deadline times and a task judgment section primarily determine task execution order. See e.g., col. 6, lines 12-67. These pre-determined deadlines are part of an interrupt scheme pre-built into the operating system. See e.g., col. 7, line 57 – col. 8, line 3. As stated in the Applicant’s specification, the present claims are directed towards a method and system free from pre-built interrupts.

As the Examiner states Akiyama does not separate tasks into foreground and background tasks and schedule background tasks independent of foreground tasks. However, Applicant submits that Akiyama also does not teach or suggest the concept of registered services or utilizing a service manager to rank and schedule those registered services. Moreover, Akiyama does not teach switching between task blocks based on pre-assigned time slice, rather it teaches task switching based on pre-built interrupt signals. See e.g., claim 1. This is because Akiyama does not contemplate the issue of unreliable pre-built interrupt schemes as applied to third party applications.

Burns does not cure Akiyama’s deficiencies. Burns teaches the management of background processes by adding another processor. Efficiency is gained by running a single thread on the background processor. See e.g., col. 4, lines 20-50. As such, background tasks in Burns do not run in dedicated time slices as claimed, they run on a dedicated background

processor. Moreover, combining Burns with Akiyama impermissibly changes the function of Akiyama.

Fletcher does not cure the Akiyama-Burns combination's deficiencies. Fletcher does not disclose the concept of background tasks. As such, its combination with Burns changes the fundamental operation of Burns.

Even though these references are directed towards multitasking systems, each reference treats its operation of those systems in quite disparate ways. It is not likely one of ordinary skill would look to a reference that does not contain the concept of background tasks and registered services, and attempt to combine it with a reference that requires an additional background processor, and then in turn look to add a reference that again does not disclose the concept of background tasks. Applicant submits this particular combination is only achieved through impermissible hindsight after consulting the present specification. Accordingly, Applicant respectfully requests withdrawal of this rejection.

Claims 3, 12, 18, 24 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Akiyama, in view of Burns, in view of Fletcher et al., as applied in claims 1, 10, 16, 23 and 26 above, and further in view of Mathur et al. (U.S. Patent No. 5,742,825). Applicant respectfully traverses this rejection.

As argued above, the Akiyama-Burns-Fletcher combination does not teach or suggest the present claims. Mathur does not cure the combination's deficiencies. Like Akiyama, Mathur suffers from the same issues of pre-built interrupt signals. Accordingly, Applicant respectfully requests withdrawal of this rejection.

Conclusion

Applicant respectfully submits the claims are in condition for allowance. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections, and that they be withdrawn. The Examiner is invited to telephone the undersigned representative if an interview might expedite allowance of this application. Applicant also respectfully requests an Advisory Action.

Respectfully submitted,

BERRY & ASSOCIATES P.C.

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By: /Shawn Diedrich/

Shawn Diedrich

Registration No 58,176

Correspondence Address

Cust. No. 49637

Berry & Associates, P.C.
9255 Sunset Boulevard, Suite 810
Los Angeles, CA 90069
Phone: (310) 247-2860
Fax: (310) 247-2864